

Galena, Illinois

January 13, 2010

EPA Region 5 Records Ctr.



377232

Mr. Thomas Turner
Associate Regional Counsel
United States Environmental
Protection Agency
Region 5
77 W. Jackson Boulevard
Chicago, IL 60604-3590

Re: Bautsch-Gray Mine Site
Jo Daviess County, Illinois

Dear Mr. Turner:

We represent West Galena Development, Inc. and Chains & Links, Inc., both Illinois corporations, in connection with issues that have been raised concerning my clients' ownership of a portion of the Bautsch-Gray Mine Site. This will confirm your voice mail message left on my answering machine on January 6, 2010. In that message you requested that any and all comments from my clients relating to your proposed Administrative Order By Consent ("AOC") should be submitted in writing to your office no later than Wednesday, January 13, 2010. I have reviewed the proposed AOC with my clients and comment as follows:

1. The AOC states that Thomas Wienen and Lois Jean Wienen-Knautz are the owners of the facility and/or operators of the facility and are therefore defined as Respondents. We want to clarify that Thomas Wienen and Lois Jean Wienen-Knautz are not the owners nor the operators of the facility. The owners are West Galena Development, Inc. and Chains & Links, Inc. Copies of recorded deeds showing said ownership are attached hereto and the real estate owned by said corporations totals approximately 18.8 acres. Further, said corporate owners have never been operators of the facility.

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2. In my office conference with Mr. Len Zintak and Mr. William Ryczek on December 21, 2009, they stated that they were representatives of the U.S. EPA Office and part of the Emergency Response Branch. They stated that their sole purpose was to accomplish three (3) tasks:

A. See that access is restricted to the site by having a lock installed on the gate, having No Trespass signs erected and having a snow fence erected parallel with Blackjack Road on the tailing pile to prevent access by the public.

B. To remove gravel from the Hartness property at 746 S. Blackjack Road, Galena, Illinois, that washed across Blackjack Road from the tailing pile, possibly from the rain storm in late August of 2009. Also, to erect snow fence in the yard of the Hartness property to prevent access by members of the Hartness family.

C. With permission of the Hartness family, to install a whole house water filter by a local registered plumber.

The proposed AOC containing provisions covering thirty (30) pages in length is a substantial leap from the message conveyed by Messrs. Zintak and Ryczek.

3. The Agreement refers to a requirement that the Respondents shall retain one or more contractors to perform the work. Paragraph VII further requires the designation of a project coordinator, compliance with specifications and guidelines, the formulation of a health and safety plan, a work plan schedule, written progress reports and a final report. In my conversation with Messrs. Zintak and Ryczek, they stated that Tom Wiene could elect to use his equipment and remove the tailings from the East side of Blackjack Road, from the Hartness property, back onto the tailing pile. From visual observation, the amount of gravel to be removed is less than a 10 yd. tandem dump truck load. With the assistance and advice from Mr. Zintak, this task can be accomplished very quickly and easily. The requirements of the AOC appear to address a task far in excess from what is contemplated here. Please confirm that the

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material washed across the road can be deposited back onto the tailing pile.

4. The AOC states that the Respondents shall be responsible for fees and costs incurred by the U.S. in obtaining access to the Hartness property. If Mr. & Mrs. Hartness will not allow access to their property for the purpose of having the gravel removed and having the water system installed, why should any measures be taken that would require Respondents to incur costs? The Hartnesses have lived there for seventeen (17) years. They knew the condition of the water before they bought the property.

5. My clients assert business confidentiality claims covering all of the documents or information submitted to the U.S. EPA under this AOC pursuant to Paragraph X.

Please advise why the Respondents are responsible for payment of past response costs. My clients have never operated this facility. The washing of tailings from the abandoned mine site was the result of a rain storm and not the result of any activity on the part of my clients. Further, the condition of the well water on the Hartness property has existed for a period of many years. We believe that Mr. & Mrs. Hartness were advised by the local health department of the condition of the well water on their property before they purchased and were advised to use bottled water.

6. In Paragraph III, future response costs are defined. Said costs are defined as including all costs incurred prior to the date of the AOC and all costs paid by the United States in connection with the site between December 1, 2009, and the effective date. While this provision refers to a specific time frame, Paragraph XX states that the U.S. EPA reserves the right to take any other equitable action as it deems appropriate and necessary requiring Respondents to perform additional activities. This reservation is so broad that it could be construed to obligate the Respondents to remove the entire tailing pile. While I don't believe that this is contemplated, this concept falls within the parameters of said language.

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My clients want to cooperate. Weather permitting, we will remove the tailings that washed onto the Hartness property at the direction of Mr. Zintak. With the permission of Mr. & Mrs. Hartness, we will install a snow fence in the yard preventing access to that portion designated by Mr. Zintak. We will install a barbed wire fence along the tailing pile to prevent access from Blackjack Road. The gate has already been secured with a lock and No Trespass signs have been posted. We are of the understanding that the well located on the Hartness property is very shallow. Consequently, we don't think that they will be acceptable to the idea of having a whole house water filter installed. To further evidence our good faith, my clients offer to purchase the Hartness property for a reasonable price. This will remove any potential danger affecting the health of the Hartness family members.

I invite your response upon receipt of these comments.

Very truly yours,

VINCENT, ROTH & TOEPFER, P.C.

BY:

Robert R. Roth

RRR:mms

Enclosures

cc: Thomas and Connie Wienen
Lois Jean Wienen-Knautz